No. _____

Supreme Court, U.S.
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In The Supreme Court of the United States

BENNY R. EDWARDS,

Petitioner,

v.

VIRGINIA INTERNATIONAL TERMINALS, INC., *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the United States Court of Appeals for the Fourth Circuit err in deciding that attorneys' fees can only be awarded against employers in favor of counsel for claimants under the Longshore and Harbor Workers' Compensation Act where an informal conference has been held?

PARTIES BELOW

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UNITED STATES DEPARTMENT OF LABOR,

Respondent

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Decision of the Benefits Review Board, United States Department of Labor, dated November 25, 2003: Benny R. Edwards v. Virginia International Terminals and Signal Administration c/o Abercrombie, Simmons & Gillete of Virginia, Unpublished (BRB No. 03-0244) (Appendix D).

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Decision of the United States Court of Appeals for the Fourth Circuit: Virginia International Terminals, Inc. v. Benny R. Edwards; Director, Office of Workers' Compensation Programs, United States Department of Labor, No. 04-1338, 398 F.3d 313 (4th Cir. Feb. 16, 2005) (Appendix B).

Decision of the United States Court of Appeals for the Fourth Circuit on Petition for Rehearing and Rehearing *En Banc* dated April 14, 2005: Virginia International Terminals, Inc. v. Benny R. Edwards; Director, Office of Workers' Compensation Programs, United States Department of Labor, No. 04-1338 (April 14, 2005) (Appendix A).

STATEMENT OF JURISDICTION

This case arose under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901, et seq. (the "LHWCA" or the "Act"). The Administrative Law Judge had jurisdiction to hear the claim pursuant to 33 U.S.C. §§ 919 (c) & (d). The Benefits Review Board had jurisdiction to hear the appeal from the Administrative Law Judge's decision, pursuant to 33 U.S.C. § 921 (b) (3). Jurisdiction was proper before the United States Court of Appeals for the Fourth Circuit upon petition for review from the Benefits Review Board, pursuant to 33 U.S.C. § 921 (c).

The United States Court of Appeals for the Fourth Circuit rendered its decision in this case on February 16, 2005. Thereafter, Petitioner Benny R. Edwards filed a Petition for Rehearing and Rehearing *En Banc*. On April 14, 2005, the United States Court of Appeals for the Fourth Circuit denied the Petition for Rehearing and Rehearing *En Banc*.

This Court has jurisdiction to review the decision of the United States Court of Appeals for the Fourth Circuit by way of *certiorari* pursuant to 28 U.S.C. § 1254 (1).

STATUTORY PROVISIONS

This case involves the interpretation of 33 U.S.C. § 928 (b), which states as follows:

(b) Attorney's fee; successful prosecution for additional compensation; independent medical evaluation of disability controversy; restriction of other assessments

If the employer or carrier pays or tenders payment of compensation without an award pursuant to section 914(a) and (b) of this title, and thereafter a controversy develops over the amount of additional compensation, if any, to which the employee may be entitled, the deputy commissioner or Board shall set the matter for an informal conference and following such conference the deputy commissioner or Board shall recommend in writing a disposition of the controversy. If the employer or carrier refuse to accept such written recommendation, within fourteen days after its receipt by them, they shall pay or tender to the employee in writing the additional compensation, if any, to which they believe the employee is entitled. If the employee refuses to accept such payment or tender of compensation, and thereafter utilizes the services of an attorney at law, and if the compensation thereafter awarded is greater than the amount paid or tendered by the employer or carrier, a reasonable attorney's fee based solely